

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 152

## **HOUSE BILL 2745**

AN ACT

AMENDING SECTIONS 13-2008, 13-2010, 23-211 AND 23-212, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-212.01; AMENDING SECTION 23-214, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 23-215 AND 23-216; AMENDING TITLE 23, CHAPTER 2, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-361.01; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 44; RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2008, Arizona Revised Statutes, is amended to read:

13-2008. Taking or knowingly accepting identity of another person or entity; classification

A. A person commits taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, OR WITH THE INTENT TO OBTAIN OR CONTINUE EMPLOYMENT.

B. A PERSON COMMITS KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON IF THE PERSON, IN HIRING AN EMPLOYEE, KNOWINGLY DOES BOTH OF THE FOLLOWING:

1. ACCEPTS ANY PERSONAL IDENTIFYING INFORMATION OF ANOTHER PERSON FROM AN INDIVIDUAL AND KNOWS THAT THE INDIVIDUAL IS NOT THE ACTUAL PERSON IDENTIFIED BY THAT INFORMATION.

2. USES THAT IDENTITY INFORMATION FOR THE PURPOSE OF DETERMINING WHETHER THE INDIVIDUAL WHO PRESENTED THAT IDENTITY INFORMATION HAS THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 UNITED STATES CODE SECTION 1324a.

~~B.~~ C. On the request of a person or entity, a peace officer in any jurisdiction in which an element of the AN offense UNDER THIS SECTION is committed, a result of the AN offense UNDER THIS SECTION occurs or the person or entity whose identity is taken OR ACCEPTED resides or is located shall take a report. The peace officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which a violation of this section occurred.

~~C.~~ D. If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any precinct in which a violation is alleged to have occurred. If a defendant is alleged to have committed multiple violations of this section within the state, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any county in which a violation is alleged to have occurred.

~~D.~~ E. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

~~E.~~ F. Taking the identity of another person or entity OR KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON is a class 4 felony.

1       Sec. 2. Section 13-2010, Arizona Revised Statutes, is amended to read:  
2       13-2010. Trafficking in the identity of another person or

3       entity; classification

4       A. A person commits trafficking in the identity of another person or  
5       entity if the person knowingly sells, transfers or transmits any personal  
6       identifying information or entity identifying information of another person  
7       or entity, including a real or fictitious person or entity, without the  
8       consent of the other person or entity for any unlawful purpose or to cause  
9       loss to the person or entity whether or not the other person or entity  
10      actually suffers any economic loss, OR ALLOWING ANOTHER PERSON TO OBTAIN OR  
11      CONTINUE EMPLOYMENT.

12      B. This section does not apply to a violation of section 4-241 by a  
13      person who is under twenty-one years of age.

14      C. Trafficking in the identity of another person or entity is a  
15      class 2 felony.

16      Sec. 3. Section 23-211, Arizona Revised Statutes, is amended to read:

17      23-211. Definitions

18      In this article, unless the context otherwise requires:

19      1. "Agency" means any agency, department, board or commission of this  
20      state or a county, city or town that issues a license for purposes of  
21      operating a business in this state.

22      2. "EMPLOY" MEANS HIRING AN EMPLOYEE AFTER DECEMBER 31, 2007.

23      3. "Employee":

24      (a) Means any person who ~~performs employment~~ PROVIDES services OR  
25      LABOR for an employer ~~pursuant to an employment relationship between the~~  
26      ~~employee and employer~~ IN THIS STATE FOR WAGES OR OTHER REMUNERATION.

27      (b) DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR.

28      4. "Employer" means any individual or type of organization that  
29      transacts business in this state, that has a license issued by an agency in  
30      this state and that employs one or more ~~individuals who perform employment~~  
31      ~~services~~ EMPLOYEES in this state. Employer includes this state, any  
32      political subdivision of this state and self-employed persons. IN THE CASE  
33      OF AN INDEPENDENT CONTRACTOR, EMPLOYER MEANS THE INDEPENDENT CONTRACTOR AND  
34      DOES NOT MEAN THE PERSON OR ORGANIZATION THAT USES THE CONTRACT LABOR.

35      ~~2-~~ 5. "~~Basic pilot~~ E-VERIFY program" means the ~~basic~~ employment  
36      verification pilot program as jointly administered by the United States  
37      department of homeland security and the social security administration or ANY  
38      OF its successor ~~program~~ PROGRAMS.

39      6. "INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY THAT  
40      CARRIES ON AN INDEPENDENT BUSINESS, THAT CONTRACTS TO DO A PIECE OF WORK  
41      ACCORDING TO THE INDIVIDUAL'S OR ENTITY'S OWN MEANS AND METHODS AND THAT IS  
42      SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN  
43      INDEPENDENT CONTRACTOR IS DETERMINED ON A CASE-BY-CASE BASIS THROUGH VARIOUS  
44      FACTORS, INCLUDING WHETHER THE INDIVIDUAL OR ENTITY:

1 (a) SUPPLIES THE TOOLS OR MATERIALS.  
2 (b) MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC.  
3 (c) WORKS OR MAY WORK FOR A NUMBER OF CLIENTS AT THE SAME TIME.  
4 (d) HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF LABOR OR  
5 SERVICE PROVIDED.  
6 (e) INVESTS IN THE FACILITIES FOR WORK.  
7 (f) DIRECTS THE ORDER OR SEQUENCE IN WHICH THE WORK IS COMPLETED.  
8 (g) DETERMINES THE HOURS WHEN THE WORK IS COMPLETED.  
9 ~~5-~~ 7. "Intentionally" has the same meaning prescribed in section  
10 13-105.  
11 ~~6-~~ 8. "Knowingly employ an unauthorized alien" means the actions  
12 described in 8 United States Code section 1324a. This term shall be  
13 interpreted consistently with 8 United States Code section 1324a and any  
14 applicable federal rules and regulations.  
15 ~~7-~~ 9. "License":  
16 (a) Means any agency permit, certificate, approval, registration,  
17 charter or similar form of authorization that is required by law and that is  
18 issued by any agency for the purposes of operating a business in this state.  
19 (b) Includes:  
20 (i) Articles of incorporation under title 10.  
21 (ii) A certificate of partnership, a partnership registration or  
22 articles of organization under title 29.  
23 (iii) A grant of authority issued under title 10, chapter 15.  
24 (iv) Any transaction privilege tax license.  
25 (c) Does not include:  
26 (i) Any license issued pursuant to title 45 or 49 or rules adopted  
27 pursuant to those titles.  
28 (ii) Any professional license.  
29 10. "SOCIAL SECURITY NUMBER VERIFICATION SERVICE" MEANS THE PROGRAM  
30 ADMINISTERED BY THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR  
31 PROGRAMS.  
32 ~~8-~~ 11. "Unauthorized alien" means an alien who does not have the  
33 legal right or authorization under federal law to work in the United States  
34 as described in 8 United States Code section 1324a(h)(3).  
35 Sec. 4. Section 23-212, Arizona Revised Statutes, is amended to read:  
36 23-212. Knowingly employing unauthorized aliens; prohibition;  
37 false and frivolous complaints; violation;  
38 classification; license suspension and revocation;  
39 affirmative defense  
40 A. An employer shall not ~~intentionally employ an unauthorized alien or~~  
41 knowingly employ an unauthorized alien. IF, IN THE CASE WHEN AN EMPLOYER  
42 USES A CONTRACT, SUBCONTRACT OR OTHER INDEPENDENT CONTRACTOR AGREEMENT TO  
43 OBTAIN THE LABOR OF AN ALIEN IN THIS STATE, THE EMPLOYER KNOWINGLY CONTRACTS  
44 WITH AN UNAUTHORIZED ALIEN OR WITH A PERSON WHO EMPLOYS OR CONTRACTS WITH AN

1 UNAUTHORIZED ALIEN TO PERFORM THE LABOR, THE EMPLOYER VIOLATES THIS  
2 SUBSECTION.

3 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON  
4 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SECTION. THE COMPLAINANT SHALL  
5 NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE  
6 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. On receipt of a  
7 complaint ON A PRESCRIBED COMPLAINT FORM that an employer allegedly  
8 ~~intentionally employs an unauthorized alien or~~ knowingly employs an  
9 unauthorized alien, the attorney general or county attorney shall investigate  
10 whether the employer has violated subsection A OF THIS SECTION. IF A  
11 COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM,  
12 THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY INVESTIGATE WHETHER THE EMPLOYER  
13 HAS VIOLATED SUBSECTION A OF THIS SECTION. THIS SUBSECTION SHALL NOT BE  
14 CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS COMPLAINTS THAT ARE NOT  
15 SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE ATTORNEY GENERAL OR COUNTY  
16 ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE BASED SOLELY ON RACE,  
17 COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS SUBMITTED TO A COUNTY ATTORNEY  
18 SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE ALLEGED  
19 UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY SHERIFF OR  
20 ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY ASSIST IN INVESTIGATING A  
21 COMPLAINT. When investigating a complaint, the attorney general or county  
22 attorney shall verify the work authorization of the alleged unauthorized  
23 alien with the federal government pursuant to 8 United States Code section  
24 1373(c). A state, county or local official shall not attempt to  
25 independently make a final determination on whether an alien is authorized to  
26 work in the United States. An alien's immigration status or work  
27 authorization status shall be verified with the federal government pursuant  
28 to 8 United States Code section 1373(c). A person who knowingly files a  
29 false and frivolous complaint under this subsection is guilty of a class 3  
30 misdemeanor.

31 C. If, after an investigation, the attorney general or county attorney  
32 determines that the complaint is not FALSE AND frivolous:

33 1. The attorney general or county attorney shall notify the United  
34 States immigration and customs enforcement of the unauthorized alien.

35 2. The attorney general or county attorney shall notify the local law  
36 enforcement agency of the unauthorized alien.

37 3. The attorney general shall notify the appropriate county attorney  
38 to bring an action pursuant to subsection D OF THIS SECTION if the complaint  
39 was originally filed with the attorney general.

40 D. An action for a violation of subsection A OF THIS SECTION shall be  
41 brought against the employer by the county attorney in the county where the  
42 unauthorized alien employee is OR WAS employed BY THE EMPLOYER. The county  
43 attorney shall not bring an action against any employer for any violation of  
44 subsection A OF THIS SECTION that occurs before January 1, 2008. A second

1 violation of this section shall be based only on an unauthorized alien who is  
2 OR WAS employed by the employer after an action has been brought for a  
3 violation of subsection A OF THIS SECTION OR SECTION 23-212.01, SUBSECTION A.

4 E. For any action in superior court under this section, the court  
5 shall expedite the action, including assigning the hearing at the earliest  
6 practicable date.

7 F. On a finding of a violation of subsection A OF THIS SECTION:

8 1. For a first violation ~~during a three year period that is a knowing~~  
9 ~~violation of subsection A~~, AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION,  
10 the court:

11 (a) Shall order the employer to terminate the employment of all  
12 unauthorized aliens.

13 (b) Shall order the employer to be subject to a three year  
14 probationary period FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN  
15 PERFORMED WORK. During the probationary period the employer shall file  
16 quarterly reports IN THE FORM PROVIDED IN SECTION 23-722.01 with the county  
17 attorney of each new employee who is hired by the employer at the ~~specific~~  
18 BUSINESS location where the unauthorized alien performed work.

19 (c) Shall order the employer to file a signed sworn affidavit with the  
20 county attorney within three business days after the order is issued. The  
21 affidavit shall state that the employer has terminated the employment of all  
22 unauthorized aliens IN THIS STATE and that the employer will not  
23 intentionally or knowingly employ an unauthorized alien IN THIS STATE. The  
24 court shall order the appropriate agencies to suspend all licenses subject to  
25 this subdivision that are held by the employer if the employer fails to file  
26 a signed sworn affidavit with the county attorney within three business days  
27 after the order is issued. All licenses that are suspended under this  
28 subdivision shall remain suspended until the employer files a signed sworn  
29 affidavit with the county attorney. Notwithstanding any other law, on filing  
30 of the affidavit the suspended licenses shall be reinstated immediately by  
31 the appropriate agencies. For the purposes of this subdivision, the licenses  
32 that are subject to suspension under this subdivision are all licenses that  
33 are held by the employer ~~and that are necessary to operate the employer's~~  
34 ~~business at the employer's~~ SPECIFIC TO THE business location where the  
35 unauthorized alien performed work. ~~If a license is not necessary to operate~~  
36 ~~the employer's business at~~ THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO  
37 the ~~specific~~ BUSINESS location where the unauthorized alien performed work,  
38 but a license is necessary to operate the employer's business in general, the  
39 licenses that are subject to suspension under this subdivision are all  
40 licenses that are held by the employer at the employer's primary place of  
41 business. On receipt of the court's order and notwithstanding any other law,  
42 the appropriate agencies shall suspend the licenses according to the court's  
43 order. The court shall send a copy of the court's order to the attorney

1 general and the attorney general shall maintain the copy pursuant to  
2 subsection G OF THIS SECTION.

3 (d) May order the appropriate agencies to suspend all licenses  
4 described in subdivision (c) of this paragraph that are held by the employer  
5 for not to exceed ten business days. The court shall base its decision to  
6 suspend under this subdivision on any evidence or information submitted to it  
7 during the action for a violation of this subsection and shall consider the  
8 following factors, if relevant:

- 9 (i) The number of unauthorized aliens employed by the employer.  
10 (ii) Any prior misconduct by the employer.  
11 (iii) The degree of harm resulting from the violation.  
12 (iv) Whether the employer made good faith efforts to comply with any  
13 applicable requirements.  
14 (v) The duration of the violation.  
15 (vi) The role of the directors, officers or principals of the employer  
16 in the violation.  
17 (vii) Any other factors the court deems appropriate.

18 ~~2. For a first violation during a five year period that is an~~  
19 ~~intentional violation of subsection A, the court shall:~~

20 ~~(a) Order the employer to terminate the employment of all unauthorized~~  
21 ~~aliens.~~

22 ~~(b) Order the employer to be subject to a five year probationary~~  
23 ~~period. During the probationary period the employer shall file quarterly~~  
24 ~~reports with the county attorney of each new employee who is hired by the~~  
25 ~~employer at the specific location where the unauthorized alien performed~~  
26 ~~work.~~

27 ~~(c) Order the appropriate agencies to suspend all licenses, described~~  
28 ~~in subdivision (d) of this paragraph that are held by the employer for a~~  
29 ~~minimum of ten days. The court shall base its decision on the length of the~~  
30 ~~suspension under this subdivision on any evidence or information submitted to~~  
31 ~~it during the action for a violation of this subsection and shall consider~~  
32 ~~the following factors, if relevant:~~

- 33 ~~(i) The number of unauthorized aliens employed by the employer.~~  
34 ~~(ii) Any prior misconduct by the employer.~~  
35 ~~(iii) The degree of harm resulting from the violation.~~  
36 ~~(iv) Whether the employer made good faith efforts to comply with any~~  
37 ~~applicable requirements.~~  
38 ~~(v) The duration of the violation.~~  
39 ~~(vi) The role of the directors, officers or principals of the employer~~  
40 ~~in the violation.~~  
41 ~~(vii) Any other factors the court deems appropriate.~~

42 ~~(d) Order the employer to file a signed sworn affidavit with the~~  
43 ~~county attorney. The affidavit shall state that the employer has terminated~~  
44 ~~the employment of all unauthorized aliens and that the employer will not~~

1 ~~intentionally or knowingly employ an unauthorized alien. All licenses that~~  
2 ~~are suspended under this subdivision shall remain suspended until the~~  
3 ~~employer files a signed sworn affidavit with the county attorney. For the~~  
4 ~~purposes of this subdivision, the licenses that are subject to suspension~~  
5 ~~under this subdivision are all licenses that are held by the employer and~~  
6 ~~that are necessary to operate the employer's business at the employer's~~  
7 ~~business location where the unauthorized alien performed work. If a license~~  
8 ~~is not necessary to operate the employer's business at the specific location~~  
9 ~~where the unauthorized alien performed work, but a license is necessary to~~  
10 ~~operate the employer's business in general, the licenses that are subject to~~  
11 ~~suspension under this subdivision are all licenses that are held by the~~  
12 ~~employer at the employer's primary place of business. On receipt of the~~  
13 ~~court's order and notwithstanding any other law, the appropriate agencies~~  
14 ~~shall suspend the licenses according to the court's order. The court shall~~  
15 ~~send a copy of the court's order to the attorney general and the attorney~~  
16 ~~general shall maintain the copy pursuant to subsection G.~~

17 3. 2. ~~For a second violation of subsection A during the period of~~  
18 ~~probation, AS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION, the court shall~~  
19 ~~order the appropriate agencies to permanently revoke all licenses that are~~  
20 ~~held by the employer and that are necessary to operate the employer's~~  
21 ~~business at the employer's SPECIFIC TO THE business location where the~~  
22 ~~unauthorized alien performed work. If a license is not necessary to operate~~  
23 ~~the employer's business at THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO~~  
24 ~~the specific BUSINESS location where the unauthorized alien performed work,~~  
25 ~~but a license is necessary to operate the employer's business in general, the~~  
26 ~~court shall order the appropriate agencies to permanently revoke all licenses~~  
27 ~~that are held by the employer at the employer's primary place of business.~~  
28 ~~On receipt of the order and notwithstanding any other law, the appropriate~~  
29 ~~agencies shall immediately revoke the licenses.~~

30 3. THE VIOLATION SHALL BE CONSIDERED:

31 (a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
32 VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT  
33 UNDER THIS SUBSECTION OR SECTION 23-212.01, SUBSECTION F FOR THAT EMPLOYER'S  
34 BUSINESS LOCATION.

35 (b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
36 VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER  
37 THIS SUBSECTION OR SECTION 23-212.01, SUBSECTION F FOR THAT EMPLOYER'S  
38 BUSINESS LOCATION.

39 G. The attorney general shall maintain copies of court orders that are  
40 received pursuant to subsection F OF THIS SECTION and shall maintain a  
41 database of the employers who AND BUSINESS LOCATIONS THAT have a first  
42 violation of subsection A OF THIS SECTION and make the court orders available  
43 on the attorney general's website.



1           H. On determining whether an employee is an unauthorized alien, the  
2 court shall consider only the federal government's determination pursuant to  
3 8 United States Code section 1373(c). The federal government's determination  
4 creates a rebuttable presumption of the employee's lawful status. The court  
5 may take judicial notice of the federal government's determination and may  
6 request the federal government to provide automated or testimonial  
7 verification pursuant to 8 United States Code section 1373(c).

8           I. For the purposes of this section, proof of verifying the employment  
9 authorization of an employee through the ~~basic-pilot~~ E-VERIFY program creates  
10 a rebuttable presumption that an employer did not ~~intentionally employ an~~  
11 ~~unauthorized alien or~~ knowingly employ an unauthorized alien.

12           J. For the purposes of this section, an employer ~~who~~ THAT establishes  
13 that it has complied in good faith with the requirements of 8 United States  
14 Code section ~~1324b~~ 1324a(b) establishes an affirmative defense that the  
15 employer did not ~~intentionally or~~ knowingly employ an unauthorized alien. AN  
16 EMPLOYER IS CONSIDERED TO HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED  
17 STATES CODE SECTION 1324a(b), NOTWITHSTANDING AN ISOLATED, SPORADIC OR  
18 ACCIDENTAL TECHNICAL OR PROCEDURAL FAILURE TO MEET THE REQUIREMENTS, IF THERE  
19 IS A GOOD FAITH ATTEMPT TO COMPLY WITH THE REQUIREMENTS.

20           Sec. 5. Title 23, chapter 2, article 2, Arizona Revised Statutes, is  
21 amended by adding section 23-212.01, to read:

22           23-212.01. Intentionally employing unauthorized aliens;  
23                           prohibition; false and frivolous complaints;  
24                           violation; classification; license suspension and  
25                           revocation; affirmative defense

26           A. AN EMPLOYER SHALL NOT INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN.  
27 IF, IN THE CASE WHEN AN EMPLOYER USES A CONTRACT, SUBCONTRACT OR OTHER  
28 INDEPENDENT CONTRACTOR AGREEMENT TO OBTAIN THE LABOR OF AN ALIEN IN THIS  
29 STATE, THE EMPLOYER INTENTIONALLY CONTRACTS WITH AN UNAUTHORIZED ALIEN OR  
30 WITH A PERSON WHO EMPLOYS OR CONTRACTS WITH AN UNAUTHORIZED ALIEN TO PERFORM  
31 THE LABOR, THE EMPLOYER VIOLATES THIS SUBSECTION.

32           B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON  
33 TO ALLEGE A VIOLATION OF SUBSECTION A OF THIS SECTION. THE COMPLAINANT SHALL  
34 NOT BE REQUIRED TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE  
35 COMPLAINT FORM OR TO HAVE THE COMPLAINT FORM NOTARIZED. ON RECEIPT OF A  
36 COMPLAINT ON A PRESCRIBED COMPLAINT FORM THAT AN EMPLOYER ALLEGEDLY  
37 INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY  
38 ATTORNEY SHALL INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF  
39 THIS SECTION. IF A COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A  
40 PRESCRIBED COMPLAINT FORM, THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY  
41 INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A OF THIS SECTION.  
42 THIS SUBSECTION SHALL NOT BE CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS  
43 COMPLAINTS THAT ARE NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE  
44 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE

1 BASED SOLELY ON RACE, COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS  
2 SUBMITTED TO A COUNTY ATTORNEY SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN  
3 THE COUNTY IN WHICH THE ALLEGED UNAUTHORIZED ALIEN IS OR WAS EMPLOYED BY THE  
4 EMPLOYER. THE COUNTY SHERIFF OR ANY OTHER LOCAL LAW ENFORCEMENT AGENCY MAY  
5 ASSIST IN INVESTIGATING A COMPLAINT. WHEN INVESTIGATING A COMPLAINT, THE  
6 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF  
7 THE ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT PURSUANT TO  
8 8 UNITED STATES CODE SECTION 1373(c). A STATE, COUNTY OR LOCAL OFFICIAL  
9 SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL DETERMINATION ON WHETHER AN  
10 ALIEN IS AUTHORIZED TO WORK IN THE UNITED STATES. AN ALIEN'S IMMIGRATION  
11 STATUS OR WORK AUTHORIZATION STATUS SHALL BE VERIFIED WITH THE FEDERAL  
12 GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A PERSON WHO  
13 KNOWINGLY FILES A FALSE AND FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS  
14 GUILTY OF A CLASS 3 MISDEMEANOR.

15 C. IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY  
16 DETERMINES THAT THE COMPLAINT IS NOT FALSE AND FRIVOLOUS:

17 1. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE UNITED  
18 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE UNAUTHORIZED ALIEN.

19 2. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE LOCAL LAW  
20 ENFORCEMENT AGENCY OF THE UNAUTHORIZED ALIEN.

21 3. THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE COUNTY ATTORNEY  
22 TO BRING AN ACTION PURSUANT TO SUBSECTION D OF THIS SECTION IF THE COMPLAINT  
23 WAS ORIGINALLY FILED WITH THE ATTORNEY GENERAL.

24 D. AN ACTION FOR A VIOLATION OF SUBSECTION A OF THIS SECTION SHALL BE  
25 BROUGHT AGAINST THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE  
26 UNAUTHORIZED ALIEN EMPLOYEE IS OR WAS EMPLOYED BY THE EMPLOYER. THE COUNTY  
27 ATTORNEY SHALL NOT BRING AN ACTION AGAINST ANY EMPLOYER FOR ANY VIOLATION OF  
28 SUBSECTION A OF THIS SECTION THAT OCCURS BEFORE JANUARY 1, 2008. A SECOND  
29 VIOLATION OF THIS SECTION SHALL BE BASED ONLY ON AN UNAUTHORIZED ALIEN WHO IS  
30 OR WAS EMPLOYED BY THE EMPLOYER AFTER AN ACTION HAS BEEN BROUGHT FOR A  
31 VIOLATION OF SUBSECTION A OF THIS SECTION OR SECTION 23-212, SUBSECTION A.

32 E. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT  
33 SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST  
34 PRACTICABLE DATE.

35 F. ON A FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION:

36 1. FOR A FIRST VIOLATION, AS DESCRIBED IN PARAGRAPH 3 OF THIS  
37 SUBSECTION, THE COURT SHALL:

38 (a) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED  
39 ALIENS.

40 (b) ORDER THE EMPLOYER TO BE SUBJECT TO A FIVE YEAR PROBATIONARY  
41 PERIOD FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.  
42 DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY REPORTS IN  
43 THE FORM PROVIDED IN SECTION 23-722.01 WITH THE COUNTY ATTORNEY OF EACH NEW

1 EMPLOYEE WHO IS HIRED BY THE EMPLOYER AT THE BUSINESS LOCATION WHERE THE  
2 UNAUTHORIZED ALIEN PERFORMED WORK.

3 (c) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES DESCRIBED  
4 IN SUBDIVISION (d) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR A  
5 MINIMUM OF TEN DAYS. THE COURT SHALL BASE ITS DECISION ON THE LENGTH OF THE  
6 SUSPENSION UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO  
7 IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER  
8 THE FOLLOWING FACTORS, IF RELEVANT:

9 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

10 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

11 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

12 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY  
13 APPLICABLE REQUIREMENTS.

14 (v) THE DURATION OF THE VIOLATION.

15 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER  
16 IN THE VIOLATION.

17 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

18 (d) ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE  
19 COUNTY ATTORNEY. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED  
20 THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS IN THIS STATE AND THAT THE EMPLOYER  
21 WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN IN THIS  
22 STATE. THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL  
23 LICENSES SUBJECT TO THIS SUBDIVISION THAT ARE HELD BY THE EMPLOYER IF THE  
24 EMPLOYER FAILS TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY  
25 WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. ALL LICENSES THAT ARE  
26 SUSPENDED UNDER THIS SUBDIVISION FOR FAILING TO FILE A SIGNED SWORN AFFIDAVIT  
27 SHALL REMAIN SUSPENDED UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH  
28 THE COUNTY ATTORNEY. FOR THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT  
29 ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE  
30 HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED  
31 ALIEN PERFORMED WORK. IF THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO  
32 THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A  
33 LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE  
34 LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL  
35 LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF  
36 BUSINESS. ON RECEIPT OF THE COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW,  
37 THE APPROPRIATE AGENCIES SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S  
38 ORDER. THE COURT SHALL SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY  
39 GENERAL AND THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY PURSUANT TO  
40 SUBSECTION G OF THIS SECTION.

41 2. FOR A SECOND VIOLATION, AS DESCRIBED IN PARAGRAPH 3 OF THIS  
42 SUBSECTION, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY  
43 REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER SPECIFIC TO THE BUSINESS  
44 LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF THE EMPLOYER DOES

1 NOT HOLD A LICENSE SPECIFIC TO THE BUSINESS LOCATION WHERE THE UNAUTHORIZED  
2 ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S  
3 BUSINESS IN GENERAL, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO  
4 PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE  
5 EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE ORDER AND  
6 NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL IMMEDIATELY  
7 REVOKE THE LICENSES.

8 3. THE VIOLATION SHALL BE CONSIDERED:

9 (a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
10 VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT  
11 UNDER THIS SUBSECTION OR SECTION 23-212, SUBSECTION F FOR THAT EMPLOYER'S  
12 BUSINESS LOCATION.

13 (b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
14 VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER  
15 THIS SUBSECTION OR SECTION 23-212, SUBSECTION F FOR THAT EMPLOYER'S BUSINESS  
16 LOCATION.

17 G. THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF COURT ORDERS THAT ARE  
18 RECEIVED PURSUANT TO SUBSECTION F OF THIS SECTION AND SHALL MAINTAIN A  
19 DATABASE OF THE EMPLOYERS AND BUSINESS LOCATIONS THAT HAVE A FIRST VIOLATION  
20 OF SUBSECTION A OF THIS SECTION AND MAKE THE COURT ORDERS AVAILABLE ON THE  
21 ATTORNEY GENERAL'S WEBSITE.

22 H. ON DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, THE  
23 COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO  
24 8 UNITED STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION  
25 CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS. THE COURT  
26 MAY TAKE JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY  
27 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL  
28 VERIFICATION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

29 I. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT  
30 AUTHORIZATION OF AN EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A  
31 REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT INTENTIONALLY EMPLOY AN  
32 UNAUTHORIZED ALIEN.

33 J. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYER THAT ESTABLISHES THAT  
34 IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 UNITED STATES CODE  
35 SECTION 1324a(b) ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT  
36 INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. AN EMPLOYER IS CONSIDERED TO  
37 HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED STATES CODE SECTION 1324a(b),  
38 NOTWITHSTANDING AN ISOLATED, SPORADIC OR ACCIDENTAL TECHNICAL OR PROCEDURAL  
39 FAILURE TO MEET THE REQUIREMENTS, IF THERE IS A GOOD FAITH ATTEMPT TO COMPLY  
40 WITH THE REQUIREMENTS.

1       Sec. 6. Section 23-214, Arizona Revised Statutes, is amended to read:

2       23-214. Verification of employment eligibility; E-verify  
3               program; economic development incentives; list of  
4               registered employers

5       A. After December 31, 2007, every employer, after hiring an employee,  
6 shall verify the employment eligibility of the employee through the ~~basic~~  
7 ~~pilot~~ E-VERIFY program.

8       B. IN ADDITION TO ANY OTHER REQUIREMENT FOR AN EMPLOYER TO RECEIVE AN  
9 ECONOMIC DEVELOPMENT INCENTIVE FROM A GOVERNMENT ENTITY, THE EMPLOYER SHALL  
10 REGISTER WITH AND PARTICIPATE IN THE E-VERIFY PROGRAM. BEFORE RECEIVING THE  
11 ECONOMIC DEVELOPMENT INCENTIVE, THE EMPLOYER SHALL PROVIDE PROOF TO THE  
12 GOVERNMENT ENTITY THAT THE EMPLOYER IS REGISTERED WITH AND IS PARTICIPATING  
13 IN THE E-VERIFY PROGRAM. IF THE GOVERNMENT ENTITY DETERMINES THAT THE  
14 EMPLOYER IS NOT COMPLYING WITH THIS SUBSECTION, THE GOVERNMENT ENTITY SHALL  
15 NOTIFY THE EMPLOYER BY CERTIFIED MAIL OF THE GOVERNMENT ENTITY'S  
16 DETERMINATION OF NONCOMPLIANCE AND THE EMPLOYER'S RIGHT TO APPEAL THE  
17 DETERMINATION. ON A FINAL DETERMINATION OF NONCOMPLIANCE, THE EMPLOYER SHALL  
18 REPAY ALL MONIES RECEIVED AS AN ECONOMIC DEVELOPMENT INCENTIVE TO THE  
19 GOVERNMENT ENTITY WITHIN THIRTY DAYS OF THE FINAL DETERMINATION. FOR THE  
20 PURPOSES OF THIS SUBSECTION:

21       1. "ECONOMIC DEVELOPMENT INCENTIVE" MEANS ANY GRANT, LOAN OR  
22 PERFORMANCE-BASED INCENTIVE FROM ANY GOVERNMENT ENTITY THAT IS AWARDED AFTER  
23 SEPTEMBER 30, 2008. ECONOMIC DEVELOPMENT INCENTIVE DOES NOT INCLUDE ANY TAX  
24 PROVISION UNDER TITLE 42 OR 43.

25       2. "GOVERNMENT ENTITY" MEANS THIS STATE AND ANY POLITICAL SUBDIVISION  
26 OF THIS STATE THAT RECEIVES AND USES TAX REVENUES.

27       C. EVERY THREE MONTHS THE ATTORNEY GENERAL SHALL REQUEST FROM THE  
28 UNITED STATES DEPARTMENT OF HOMELAND SECURITY A LIST OF EMPLOYERS FROM THIS  
29 STATE THAT ARE REGISTERED WITH THE E-VERIFY PROGRAM. ON RECEIPT OF THE LIST  
30 OF EMPLOYERS, THE ATTORNEY GENERAL SHALL MAKE THE LIST AVAILABLE ON THE  
31 ATTORNEY GENERAL'S WEBSITE.

32       Sec. 7. Title 23, chapter 2, article 2, Arizona Revised Statutes, is  
33 amended by adding sections 23-215 and 23-216, to read:

34       23-215. Voluntary employer enhanced compliance program; program  
35               termination

36       A. THE ATTORNEY GENERAL SHALL ESTABLISH THE VOLUNTARY EMPLOYER  
37 ENHANCED COMPLIANCE PROGRAM. THE PROGRAM IS VOLUNTARY AND AN EMPLOYER IS NOT  
38 REQUIRED TO ENROLL IN THE PROGRAM.

39       B. AN EMPLOYER THAT IS ON PROBATION UNDER SECTION 23-212 OR 23-212.01  
40 MAY NOT ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM. A  
41 COURT SHALL NOT CONSIDER NONENROLLMENT IN THE VOLUNTARY EMPLOYER ENHANCED  
42 COMPLIANCE PROGRAM AS A FACTOR WHEN DETERMINING WHETHER TO SUSPEND OR REVOKE  
43 A LICENSE UNDER SECTION 23-212 OR 23-212.01.

1 C. TO ENROLL IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM, AN  
2 EMPLOYER SHALL SUBMIT A SIGNED SWORN AFFIDAVIT TO THE ATTORNEY GENERAL. THE  
3 AFFIDAVIT SHALL STATE THAT THE EMPLOYER AGREES TO PERFORM ALL OF THE  
4 FOLLOWING ACTIONS IN GOOD FAITH:

5 1. AFTER HIRING AN EMPLOYEE, THE EMPLOYER SHALL VERIFY THE EMPLOYMENT  
6 ELIGIBILITY OF THE EMPLOYEE THROUGH THE E-VERIFY PROGRAM.

7 2. TO ENSURE THE ACCURACY OF REPORTING WAGES TO THE SOCIAL SECURITY  
8 ADMINISTRATION, THE EMPLOYER SHALL VERIFY THE ACCURACY OF SOCIAL SECURITY  
9 NUMBERS THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SERVICE FOR ANY  
10 EMPLOYEE WHO IS NOT VERIFIED THROUGH THE E-VERIFY PROGRAM. WITHIN THIRTY  
11 DAYS AFTER ENROLLING IN THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM,  
12 THE EMPLOYER SHALL SUBMIT THE NECESSARY INFORMATION TO THE SOCIAL SECURITY  
13 NUMBER VERIFICATION SERVICE, INCLUDING THE FULL NAME, THE SOCIAL SECURITY  
14 NUMBER, THE DATE OF BIRTH AND THE GENDER OF EACH EMPLOYEE. ON RECEIPT OF A  
15 FAILED VERIFICATION RESULT, THE EMPLOYER SHALL NOTIFY THE EMPLOYEE OF THE  
16 DATE ON WHICH THE EMPLOYER RECEIVED THE FAILED RESULT AND INSTRUCT THE  
17 EMPLOYEE TO RESOLVE THE DISCREPANCY WITH THE SOCIAL SECURITY ADMINISTRATION  
18 WITHIN NINETY DAYS AFTER THAT DATE. THE EMPLOYER AND EMPLOYEE SHALL RESOLVE  
19 ANY FAILED RESULT WITHIN NINETY DAYS AFTER THE DATE ON WHICH THE EMPLOYER  
20 RECEIVED THE FAILED RESULT. IF THE FAILED RESULT IS NOT RESOLVED WITHIN THE  
21 NINETY-DAY PERIOD BUT THE EMPLOYER AND EMPLOYEE ARE CONTINUING TO ACTIVELY  
22 AND CONSISTENTLY WORK TOWARD RESOLVING THE FAILED RESULT WITH THE SOCIAL  
23 SECURITY ADMINISTRATION, THE NINETY-DAY PERIOD DOES NOT APPLY AS LONG AS THE  
24 EMPLOYER AND EMPLOYEE HAVE DOCUMENTED PROOF OF THESE ONGOING EFFORTS TO  
25 RESOLVE THE FAILED RESULT IN GOOD FAITH AND HAVE PROVIDED THE DOCUMENTED  
26 PROOF TO THE ATTORNEY GENERAL. THE EMPLOYER SHALL VERIFY THE ACCURACY OF THE  
27 SOCIAL SECURITY NUMBERS AND RESOLVE ANY FAILED VERIFICATION RESULTS IN A  
28 CONSISTENT MANNER FOR ALL EMPLOYEES.

29 3. IN RESPONSE TO A WRITTEN REQUEST BY THE ATTORNEY GENERAL OR COUNTY  
30 ATTORNEY STATING THE NAME OF AN EMPLOYEE FOR WHOM A COMPLAINT HAS BEEN  
31 RECEIVED UNDER SECTION 23-212 OR 23-212.01, THE EMPLOYER SHALL PROVIDE THE  
32 ATTORNEY GENERAL OR COUNTY ATTORNEY THE DOCUMENTS INDICATING THAT THE  
33 EMPLOYEE WAS VERIFIED THROUGH THE E-VERIFY PROGRAM OR THAT THE ACCURACY OF  
34 THE EMPLOYEE'S WAGE REPORT WAS VERIFIED THROUGH THE SOCIAL SECURITY NUMBER  
35 VERIFICATION SERVICE UNDER THIS SECTION.

36 D. AN EMPLOYER THAT IS ENROLLED IN THE VOLUNTARY EMPLOYER ENHANCED  
37 COMPLIANCE PROGRAM SHALL NOT BE IN VIOLATION OF SECTION 23-212, SUBSECTION A  
38 OR SECTION 23-212.01, SUBSECTION A REGARDING AN EMPLOYEE NAMED IN A COMPLAINT  
39 UNDER SECTION 23-212 OR 23-212.01 IF THE EMPLOYER HAS COMPLETED BOTH OF THE  
40 FOLLOWING:

41 1. IN GOOD FAITH VERIFIED THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE  
42 NAMED IN THE COMPLAINT THROUGH THE E-VERIFY PROGRAM OR IN GOOD FAITH VERIFIED  
43 THE ACCURACY OF THE SOCIAL SECURITY NUMBER OF THE EMPLOYEE NAMED IN THE

1 COMPLAINT THROUGH THE SOCIAL SECURITY NUMBER VERIFICATION SYSTEM AS REQUIRED  
2 BY SUBSECTION C, PARAGRAPHS 1 AND 2 OF THIS SECTION.

3 2. PROVIDED THE ATTORNEY GENERAL OR COUNTY ATTORNEY WITH THE  
4 DOCUMENTS, AS REQUIRED BY SUBSECTION C, PARAGRAPH 3 OF THIS SECTION,  
5 INDICATING THAT THE EMPLOYER VERIFIED THE EMPLOYEE NAMED IN THE COMPLAINT.

6 E. THE ATTORNEY GENERAL SHALL MAINTAIN A LIST OF EMPLOYERS ENROLLED IN  
7 THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM AND MAKE THE LIST  
8 AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

9 F. THE ATTORNEY GENERAL SHALL DEVELOP A FORM OF RECOGNITION THAT AN  
10 EMPLOYER MAY DISPLAY TO THE GENERAL PUBLIC FOR ENROLLING IN THE VOLUNTARY  
11 EMPLOYER ENHANCED COMPLIANCE PROGRAM.

12 G. IF AN EMPLOYER DOES NOT FULLY COMPLY WITH THIS SECTION, THE  
13 ATTORNEY GENERAL SHALL TERMINATE THE EMPLOYER'S ENROLLMENT IN THE VOLUNTARY  
14 EMPLOYER ENHANCED COMPLIANCE PROGRAM. AT ANY TIME, AN EMPLOYER MAY  
15 VOLUNTARILY WITHDRAW FROM THE VOLUNTARY EMPLOYER ENHANCED COMPLIANCE PROGRAM  
16 BY NOTIFYING THE ATTORNEY GENERAL. BEGINNING ON THE DATE OF TERMINATION OR  
17 WITHDRAWAL, SUBSECTION D OF THIS SECTION NO LONGER APPLIES TO THE EMPLOYER  
18 AND THE EMPLOYER SHALL IMMEDIATELY REMOVE ANY FORM OF RECOGNITION FROM PUBLIC  
19 DISPLAY THAT IS AUTHORIZED UNDER THIS SECTION.

20 H. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2018  
21 PURSUANT TO SECTION 41-3102.

22 23-216. Independent contractors; applicability

23 FOR THE PURPOSES OF THIS ARTICLE, INDEPENDENT CONTRACTOR STATUS APPLIES  
24 TO AN INDIVIDUAL WHO PERFORMS SERVICES AND IS NOT AN EMPLOYEE PURSUANT TO  
25 SECTION 3508 OF THE INTERNAL REVENUE CODE.

26 Sec. 8. Title 23, chapter 2, article 7, Arizona Revised Statutes, is  
27 amended by adding section 23-361.01, to read:

28 23-361.01. Employer requirements; cash payments; unlawful  
29 practices; civil penalty

30 A. AN EMPLOYER THAT HAS TWO OR MORE EMPLOYEES AND PAYS HOURLY WAGES OR  
31 SALARY BY CASH TO ANY EMPLOYEE SHALL COMPLY WITH ALL OF THE FOLLOWING:

- 32 1. THE INCOME TAX WITHHOLDING LAWS PRESCRIBED IN TITLE 43, CHAPTER 4.  
33 2. THE EMPLOYER REPORTING LAWS PRESCRIBED IN SECTION 23-722.01.  
34 3. THE EMPLOYMENT SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE.  
35 4. THE WORKERS' COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS

36 TITLE.

37 B. FOR A VIOLATION OF SUBSECTION A OF THIS SECTION, THE ATTORNEY  
38 GENERAL MAY BRING AN ACTION IN SUPERIOR COURT AGAINST AN EMPLOYER. ON A  
39 FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION, THE COURT SHALL ORDER  
40 THE EMPLOYER TO PAY A CIVIL PENALTY THAT IS EQUAL TO TREBLE THE AMOUNT OF ALL  
41 WITHHOLDINGS, PAYMENTS, CONTRIBUTIONS OR PREMIUMS THAT THE EMPLOYER FAILED TO  
42 REMIT AS PRESCRIBED BY SUBSECTION A OF THIS SECTION OR FIVE THOUSAND DOLLARS  
43 FOR EACH EMPLOYEE FOR WHOM A VIOLATION WAS COMMITTED, WHICHEVER IS GREATER.

1 C. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO  
2 SUBSECTION B OF THIS SECTION TO THE STATE TREASURER, AND THE STATE TREASURER  
3 SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. MONIES DEPOSITED IN THE  
4 STATE GENERAL FUND PURSUANT TO THIS SUBSECTION SHALL BE EQUALLY APPROPRIATED  
5 TO THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HEALTH SERVICES FOR THE  
6 PURPOSES OF OFFSETTING INCREASED COSTS TO THIS STATE BY UNAUTHORIZED ALIENS.

7 D. THE CIVIL PENALTY UNDER THIS SECTION IS IN ADDITION TO ANY OTHER  
8 PENALTIES THAT MAY BE IMPOSED BY LAW.

9 Sec. 9. Title 41, chapter 6, Arizona Revised Statutes, is amended by  
10 adding article 7.2, to read:

11 ARTICLE 7.2. LICENSING ELIGIBILITY

12 41-1080. Licensing eligibility; authorized presence;  
13 documentation; applicability; definitions

14 A. AFTER SEPTEMBER 30, 2008, AN AGENCY OR POLITICAL SUBDIVISION OF  
15 THIS STATE SHALL NOT ISSUE A LICENSE TO AN INDIVIDUAL IF THE INDIVIDUAL DOES  
16 NOT PRESENT ANY OF THE FOLLOWING DOCUMENTS TO THE AGENCY OR POLITICAL  
17 SUBDIVISION INDICATING THAT THE INDIVIDUAL'S PRESENCE IN THE UNITED STATES IS  
18 AUTHORIZED UNDER FEDERAL LAW:

19 1. AN ARIZONA DRIVER LICENSE ISSUED AFTER 1996 OR AN ARIZONA  
20 NONOPERATING IDENTIFICATION LICENSE.

21 2. A DRIVER LICENSE ISSUED BY A STATE THAT VERIFIES LAWFUL PRESENCE IN  
22 THE UNITED STATES.

23 3. A BIRTH CERTIFICATE OR DELAYED BIRTH CERTIFICATE ISSUED IN ANY  
24 STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

25 4. A UNITED STATES CERTIFICATE OF BIRTH ABROAD.

26 5. A UNITED STATES PASSPORT.

27 6. A FOREIGN PASSPORT WITH A UNITED STATES VISA.

28 7. AN I-94 FORM WITH A PHOTOGRAPH.

29 8. A UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES EMPLOYMENT  
30 AUTHORIZATION DOCUMENT OR REFUGEE TRAVEL DOCUMENT.

31 9. A UNITED STATES CERTIFICATE OF NATURALIZATION.

32 10. A UNITED STATES CERTIFICATE OF CITIZENSHIP.

33 11. A TRIBAL CERTIFICATE OF INDIAN BLOOD.

34 12. A TRIBAL OR BUREAU OF INDIAN AFFAIRS AFFIDAVIT OF BIRTH.

35 B. THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL, IF ALL OF THE  
36 FOLLOWING APPLY:

37 1. THE INDIVIDUAL IS A CITIZEN OF A FOREIGN COUNTRY OR, IF AT THE TIME  
38 OF APPLICATION, THE INDIVIDUAL RESIDES IN A FOREIGN COUNTRY.

39 2. THE BENEFITS THAT ARE RELATED TO THE LICENSE DO NOT REQUIRE THE  
40 INDIVIDUAL TO BE PRESENT IN THE UNITED STATES IN ORDER TO RECEIVE THOSE  
41 BENEFITS.



C. FOR THE PURPOSES OF THIS SECTION:

1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE THAT ISSUES A LICENSE FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

2. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

Sec. 10. Title 41, Arizona Revised Statutes, is amended by adding chapter 44, to read:

CHAPTER 44

AUTHORIZED PRESENCE REQUIREMENTS

ARTICLE 1. GOVERNMENT PROCUREMENT

41-4401. Government procurement; E-verify requirement; definitions

A. AFTER SEPTEMBER 30, 2008, A GOVERNMENT ENTITY SHALL NOT AWARD A CONTRACT TO ANY CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO COMPLY WITH SECTION 23-214, SUBSECTION A. EVERY GOVERNMENT ENTITY SHALL ENSURE THAT EVERY GOVERNMENT ENTITY CONTRACTOR AND SUBCONTRACTOR COMPLIES WITH THE FEDERAL IMMIGRATION LAWS AND REGULATIONS THAT RELATE TO THEIR EMPLOYEES AND SECTION 23-214, SUBSECTION A. EVERY GOVERNMENT ENTITY SHALL REQUIRE THAT EVERY GOVERNMENT ENTITY CONTRACT INCLUDE ALL OF THE FOLLOWING PROVISIONS:

1. THAT EACH CONTRACTOR AND SUBCONTRACTOR WARRANTS THEIR COMPLIANCE WITH ALL FEDERAL IMMIGRATION LAWS AND REGULATIONS THAT RELATE TO THEIR EMPLOYEES AND THEIR COMPLIANCE WITH SECTION 23-214, SUBSECTION A.

2. THAT A BREACH OF A WARRANTY UNDER PARAGRAPH 1 SHALL BE DEEMED A MATERIAL BREACH OF THE CONTRACT THAT IS SUBJECT TO PENALTIES UP TO AND INCLUDING TERMINATION OF THE CONTRACT.

3. THAT THE GOVERNMENT ENTITY RETAINS THE LEGAL RIGHT TO INSPECT THE PAPERS OF ANY CONTRACTOR OR SUBCONTRACTOR EMPLOYEE WHO WORKS ON THE CONTRACT TO ENSURE THAT THE CONTRACTOR OR SUBCONTRACTOR IS COMPLYING WITH THE WARRANTY UNDER PARAGRAPH 1.

B. EVERY GOVERNMENT ENTITY THAT ENTERS INTO A CONTRACT SHALL ESTABLISH PROCEDURES TO CONDUCT RANDOM VERIFICATION OF THE EMPLOYMENT RECORDS OF GOVERNMENT ENTITY CONTRACTORS AND SUBCONTRACTORS TO ENSURE THAT THE CONTRACTORS AND SUBCONTRACTORS ARE COMPLYING WITH THEIR WARRANTIES.

C. A GOVERNMENT ENTITY SHALL NOT DEEM A GOVERNMENT ENTITY CONTRACTOR OR SUBCONTRACTOR IN MATERIAL BREACH OF A CONTRACT IF THE CONTRACTOR OR SUBCONTRACTOR ESTABLISHES THAT IT HAS COMPLIED WITH THE EMPLOYMENT VERIFICATION PROVISIONS PRESCRIBED BY SECTIONS 274A AND 274B OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT AND THE E-VERIFY REQUIREMENTS PRESCRIBED BY SECTION 23-214, SUBSECTION A.

1 D. FOR THE PURPOSES OF THIS SECTION:

2 1. "CONTRACT" MEANS ALL TYPES OF GOVERNMENT ENTITY AGREEMENTS,  
3 REGARDLESS OF WHAT THEY MAY BE CALLED, FOR THE PROCUREMENT OF SERVICES IN  
4 THIS STATE.

5 2. "CONTRACTOR" MEANS ANY PERSON WHO HAS A CONTRACT WITH A GOVERNMENT  
6 ENTITY.

7 3. "E-VERIFY PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PILOT PROGRAM  
8 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
9 AND THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR PROGRAMS.

10 4. "GOVERNMENT ENTITY" MEANS THIS STATE AND ANY POLITICAL SUBDIVISION  
11 OF THIS STATE THAT RECEIVES AND USES TAX REVENUES.

12 5. "SERVICES" MEANS THE FURNISHING OF LABOR, TIME OR EFFORT IN THIS  
13 STATE BY A CONTRACTOR OR SUBCONTRACTOR. SERVICES INCLUDE CONSTRUCTION OR  
14 MAINTENANCE OF ANY STRUCTURE, BUILDING OR TRANSPORTATION FACILITY OR  
15 IMPROVEMENT OF REAL PROPERTY.

16 6. "SUBCONTRACTOR" MEANS A PERSON WHO CONTRACTS TO PERFORM WORK OR  
17 RENDER SERVICE TO A CONTRACTOR OR TO ANOTHER SUBCONTRACTOR AS A PART OF A  
18 CONTRACT WITH A GOVERNMENT ENTITY.

19 Sec. 11. Severability

20 If any provision of this act or its application to any person or  
21 circumstance is held invalid, the invalidity does not affect other provisions  
22 or applications of this act that can be given effect without the invalid  
23 provision or application, and to this end the provisions of this act are  
24 severable.

25 Sec. 12. Emergency

26 This act is an emergency measure that is necessary to preserve the  
27 public peace, health or safety and is operative immediately as provided by  
28 law.

APPROVED BY THE GOVERNOR MAY 1, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2008.